

REMARKS

Claims 1-3, 8-9, 11 and 14-22 are pending and are subject to an election/restriction requirement. Specifically, the Office states that claims 1-3, 8-9 and 14-19 (“Group I”) relate to a product while claims 11 and 20-22 relate to the process of making the product. The Office requests restricting the invention to one group of the claims.

In response to the restriction requirement, Applicant provisionally elects the claims of Group I (*i.e.*, claims 1-3, 8-9 and 14-19), with traverse.

Examination of both groups concurrently is requested, given the commonality of subject matter between the two groups. The Manual of Patent Examining Procedure (M.P.E.P.) recites the requirements for a proper restriction requirement. In particular, the M.P.E.P. states:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent (see MPEP Section 802.01, Section 806.04, Section 808.01) or distinct as claimed (see MPEP Section 806.05 – Section 806.05(i)); *and*
- (B) There must be a serious burden on the examiner if restriction is required (see MPEP Section 803.02, Section 806.04(a) – Section 806.04(i), Section 808.01(a), and Section 808.02).

(M.P.E.P. § 803 (emphasis added)). The fact that *both* criteria must be satisfied is made all the more clear by the following statement in the M.P.E.P.:

If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.

(M.P.E.P. § 803 (emphasis added)). Thus, if the subject matter of the pending claims is such that there would be no serious burden on the examiner to search and examine all of the pending claims at the same time, the examiner is to do so, *even if* the pending claims

are drawn to independent or distinct inventions. Applicant respectfully submits that the criteria for examining all of the pending claims is met in the instant application. Accordingly, reconsideration and withdrawal of the restriction requirement is respectfully requested.

Although an extension of time is not deemed necessary, the Office is hereby requested and authorized to charge any extension of time fees, or any other fee required to maintain the application pending, against Deposit Account No. 04-1679 to Duane Morris LLP.

The Examiner is invited to contact the undersigned to discuss any issues pertaining to the instant application.

Respectfully submitted,



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